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PACIFIC  **TELESIS**
Group - Washington

JUL 14 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

July 14, 1993

William F. Caton
Acting Secretary
Federal Communications Commission

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JUL 14 1993

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

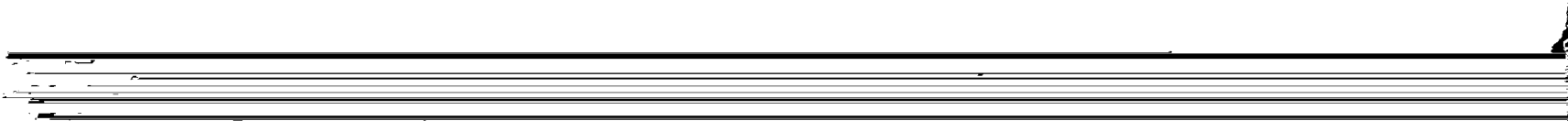
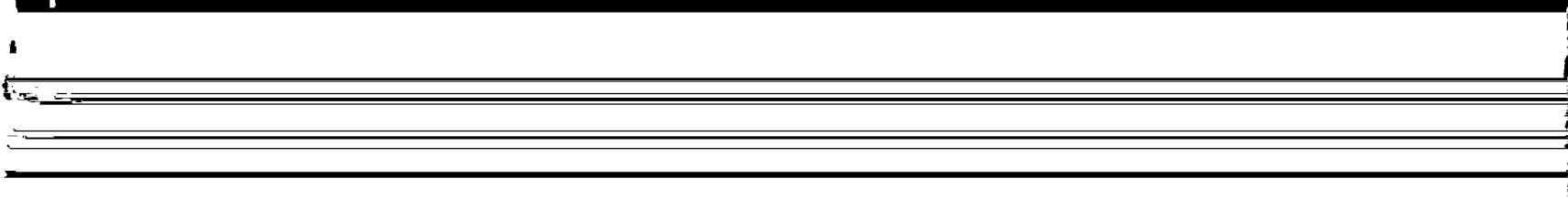

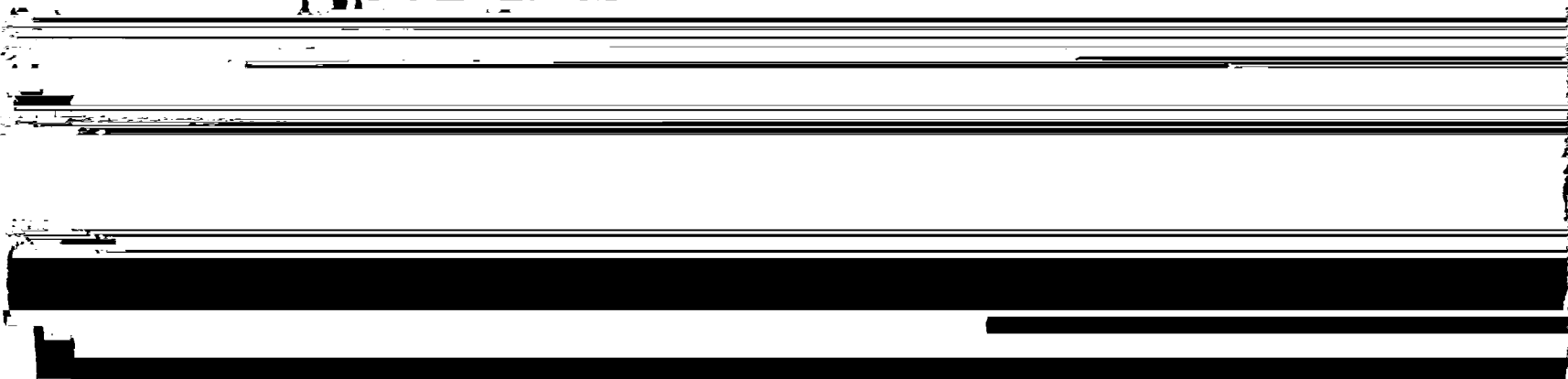
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
Clark-Bader, Inc., d/b/a)

The HDO states that the Presiding Judge has authority "to make the public interest determination required by 18 USC 6004 that a grant of immunity is essential to the resolution of an adjudicatory hearing" (emphasis supplied). However, 18 USC 6004 does not require the grant of immunity be "essential to the resolution" of a hearing.

18 USC 6004 authorizes government agencies to issue immunity orders with the approval of the Attorney General. That section sets a two part standard for the agency's decision. The agency may issue such an order if in its judgment (1) the testimony from the individual may be necessary to the public interest, and (2) such individual has refused to testify on the basis of the privilege against self-incrimination.

The statute does not require that the testimony be "essential" to the case, as the HDO suggests. The Prehearing Order obviously relies on this dictum in the HDO in deciding



of TMC instructed them to falsify the customer records which form the backbone of complainant's case. Pacific wants to introduce this testimony at the hearing and will renew its request.


The Prehearing Order apparently requires Pacific to subpoena these witnesses to the hearing, and then renew the request if they invoke their 5th Amendment rights. But waiting until the hearing to renew the motion will disrupt the hearing schedule because if the Trial Judge grants the request it will have to be referred to the Attorney General, and that may take time. We suggest that the request be raised at the prehearing conference where a proffer of evidence which will be elicited could be made. As you know, the witnesses have already invoked their privilege against self-incrimination at a deposition. Our motion for immunity together with the witnesses' statements (Miller deposition, page 7, lines 5-7, Lipkin deposition, page 5, lines 3-5) are attached for reference.

In conclusion, Pacific requests the Presiding Judge clarify that we may renew our request for immunity at the

Prehearing Conference and that the standard in determining the request is the two part test set out in 18 USC 6004.

Respectfully submitted,

PACIFIC BELL

A handwritten signature in cursive script, appearing to read "James P. Tuthill", written over a horizontal line.

JAMES P. TUTHILL

NANCY C. WOOLF

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JAMES L. WURTZ

1275 Pennsylvania Avenue, N.W.
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Its Attorneys

Date: July 14, 1993

CERTIFICATE OF SERVICE

I, Michael Bickley, certify that I have this 14th day of July, 1993 sent by regular United States mail, postage prepaid copies of the foregoing "Petition for Clarification" to:

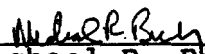
Kathy Levitz
Acting Chief
Common Carrier Bureau
Federal Communications Commission
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Washington, D.C. 20554

William F. Caton
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Michael R. Bickley

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

Clark-Bader, Inc., d/b/a
TMC Long Distance,

Complainant,

v.

Pacific Bell Telephone Company
A Pacific Telesis Company,

Defendant.

File No. E-89-85

MOTION FOR ORDER GRANTING IMMUNITY

Clark-Bader, Inc., d/b/a TMC Long Distance ("TMC") filed this action against Pacific Bell ("Pacific") alleging violations of the Communications Act relating to Pacific's tandem switch in San Diego. TMC claims, in essence, that due to problems with the tandem, TMC lost customers to other long distance carriers.¹ In support of this claim, TMC submitted Exhibit B to the complaint, a purported list of customers who cancelled service due to problems with the tandem switch. In discovery TMC produced the documents it claimed supported this exhibit.²

¹ See Complaint, para. 31.

² Complainant's Answer to Interrogatories, Answer to Interrogatory 1, dated July 3, 1989. ("TMC has produced the cancellation records for all persons cancelling their equal access service with TMC in the period between January 1987 through December 1988 for service-related reasons. See Exhibit A attached hereto.")

These documents are known as the customer service records. Stephen Bader, the President of TMC verified the Answers to Interrogatories by stating, under penalty of perjury that the Answers were true and correct. Pacific's perusal of the customer service records indicates that over 60% of the customers listed on Exhibit B either cancelled service for reasons other than service problems related to the tandem or cancelled for unknown reasons. According to the customer service records, many customers cancelled because they moved, had problems with TMC's service/accounting or for unknown reasons. Further, of the 40% of the documents that do support TMC's claims, many contain key notations (as to the reasons for cancelling service) in different handwriting, casting doubt on the authenticity of these records.

Pacific subpoenaed two former TMC employees who handled these records. Mitchell Lipkin was a customer service representative for TMC. Cathy Miller was an office manager who supervised the customer service representatives. At their depositions on October 1, 1990, both refused to testify, on Fifth Amendment grounds, questions relating to, inter alia, the preparation or review of key documents including the customer service records.³ Pacific understands that these witnesses

³ Pacific Bell forwarded transcripts of these depositions to the Commission on October 11, 1990. See attached Exhibit A, hereby incorporated by reference.

will testify that they falsified these records at the ultimate direction of Stephen Bader, the president of TMC.

Obviously, this testimony is crucial to Pacific's defense in this matter. If Pacific's tandem did not cause damage to TMC's business, then no liability can be found. Pacific therefore seeks an order from the Commission granting immunity under 18 U.S.C. 6004 to these two witnesses so that this important information can be placed in the record. Pacific has previously sought immunity for Mr. Lipkin and Ms. Miller by informal letter (see letters attached as Exhibit B and hereby incorporated by reference). Immunity is necessary to compel this testimony. Since time has passed since the documents were submitted and since one witness, Ms. Miller, has already moved out of state, it is critical that immunity be granted in the very near future so that this testimony can be elicited.

Argument

I. THE COMMISSION HAS AUTHORITY TO GRANT IMMUNITY TO WITNESSES

Administrative agencies may grant immunity under 18 U.S.C. 6001, et seq. The Federal Communications Commission is specifically named as an agency subject to these rules.⁴ Therefore the agency may grant immunity.

⁴ 18 U.S.C. 6001(1).

The standard an agency must use to grant immunity is set out in 18 U.S.C. 6004. That section states:

(a) In the case of any individual who has been or who may be called to testify or provide other information at any proceeding before an agency of the United States, the agency may, with the approval of the Attorney General, issue, in accordance with subsection (b) of this section, an order requiring the individual to give testimony or provide other information which he refuses to give or provide on the basis of his privilege against self-incrimination, such order to become effective as provided in section 6002 of this part.

(b) An agency of the United States may issue an order under subsection (a) of this section only if in its judgment --

- (1) the testimony or other information from such individual may be necessary to the public interest; and
- (2) such individual has refused or is likely to refuse to testify or provide other information on the basis of his privilege against self-incrimination.

As shown below, the circumstances of this case meet this two-pronged standard.

A. The Testimony Is In The Public Interest

The public interest is served by preserving the integrity of proceedings before the Commission. The public interest is also served when all relevant information is presented to the Commission before a decision is made.

The testimony that will be elicited from Mr. Lipkin and Ms. Miller relates to information and documents submitted to the Commission by a long distance carrier. Knowingly submitting false information to the Commission may be a crime in violation of Sections 409, 501, 502 of the Communications Act (47 U.S.C. 409, 501, 502) or 18 U.S.C. sections 1505 and 1512. Further, since Mr. Bader, the President of TMC, verified these documents,⁵ there may be liability for perjury (18 U.S.C. §1621). While TMC will presumably argue that this testimony is not credible,⁶ that argument goes to the weight of the evidence. That the testimony should be elicited from these witnesses is undisputed. Pacific must have the right to bring out all relevant evidence. Pacific believes Mr. Lipkin and Ms. Miller are disinterested, credible witnesses and that their testimony will seriously impeach TMC's case. In order to preserve the integrity of this proceeding, the Commission should grant immunity so that it can adequately investigate the allegations of impropriety.

Further, the public interest is not served by a regulated carrier's submission of tainted documents to its

⁵ Mr. Bader verified the Answers to Interrogatories, to which the customer service records were attached, as being "true and correct".

⁶ TMC's counsel has made this claim in correspondence and telephone conversations.

regulator. Carriers are required to be truthful in their dealings with the Commission and may be subjected to penalties or other liabilities for failure to do so. The public interest will be served by eliciting all relevant facts from knowledgeable witnesses so that the final decision that is made considers all relevant evidence

B. The Two Witnesses Have Already Invoked Their Fifth Amendment Rights

The second prong test of 18 U.S.C. section 6004 states that the individual for whom immunity is sought must have refused to testify or is likely to refuse to testify on the basis of the privilege against self-incrimination. Since deposition testimony has already been elicited, and submitted to the Commission, in which Mr. Lipkin and Ms. Miller refused to testify on Fifth Amendment grounds, the second part of this test is satisfied.


CONCLUSION

The two former TMC employees, Mr. Lipkin and Ms. Miller have already invoked their Fifth Amendment privilege, refusing to testify about their knowledge of key documents submitted in support of TMC's case. Pacific believes this testimony is

critical to Pacific's defense of this case and requests an order granting immunity to these witnesses so that this testimony can be considered. Because this action is in the public interest, it satisfies the statutory standard for granting immunity.

Respectfully submitted,

PACIFIC BELL


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NANCY C. WOOLF

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STANLEY J. MOORE

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(202) 383-6472

Its Attorneys

Date: March 6, 1991

CERTIFICATION OF SERVICE

I hereby certify that on March 7, 1991, true copies of the foregoing Motion for Order Granting Immunity, filed by Pacific Bell Telephone Company, A Pacific Telesis Company, were served by United States first-class mail, postage prepaid, upon the following:

Gregory A. Weiss, Esq.
Chief, Formal Complaints and
Investigation Branch
Enforcement Division
Common Carrier Bureau
Federal Communications Commission
Room 6216, 2025 M Street, N.W.
Washington, D.C. 20554

Thomas David, Esq.
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c/o Arter & Hadden
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Room 400
Washington, D.C. 20006

Ester C. Grier

Ester C. Grier

COPY

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

CLARK-BADER, INC., D/B/A/
TMC LONG DISTANCE,

COMPLAINANT,

VS.

PACIFIC BELL TELEPHONE COMPANY
A PACIFIC TELESIS COMPANY,

DEFENDANT.

NO. E-89-85

TELEPHONIC DEPOSITION OF CATHY LYNN MILLER
SAN DIEGO, CALIFORNIA
OCTOBER 1, 1990

REPORTED BY LINDA BABONAS, CSR NO. 3076

Fivecoat and With

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I N D E X

WITNESS: CATHY LYNN MILLER
BY MS. WOOLF

EXAMINATION
3

INDEX OF EXHIBITS

FOR THE DEFENDANT:
A-K EXHIBITS A-K TO THE COMPLAINT

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APPEARANCES:

FOR THE COMPLAINANT:

**DOW, LOHNES & ALBERTSON
BY CHARLES H. HELEIN, ESQ.
FIFTH FLOOR
1255 TWENTY-THIRD STREET
WASHINGTON, D.C. 20037**

FOR THE DEFENDANT:

**NANCY WOOLF, ESQ.
ROOM 1523
140 NEW MONTGOMERY STREET
SAN FRANCISCO, CALIFORNIA 94105**

FOR THE DEPONENT:

**GRAY, CARY, AMES & FRYE
BY JAN S. DRISCOLL, ESQ.
1700 FIRST INTERSTATE PLAZA
401 B STREET
SAN DIEGO, CALIFORNIA 92101**

ALSO PRESENT: MITCHELL C. LIPKIN

TELEPHONIC DEPOSITION OF CATHY LYNN MILLER

**TAKEN BY THE DEFENDANT AT SUITE 1600, 401 B STREET, SAN
DIEGO, CALIFORNIA, ON MONDAY, THE 1ST DAY OF OCTOBER, 1990
AT 11:30 A.M., BEFORE LINDA BABONAS, CSR NO. 3076, PURSUANT
TO STIPULATION.**

1 MS. DRISCOLL: FIRST, LET'S SWEAR THE WITNESSES.

2

3

CATHY LYNN MILLER

4

HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

5

6

7

8

MS. DRISCOLL: I GUESS FOR THE RECORD WE SHOULD
GIVE OUR APPEARANCES. MY NAME IS JAN DRISCOLL. I REPRESENT
CATHY MILLER AND MITCH LIPKIN.

9

10

11

MR. HELEIN: THIS IS CHARLES HELEIN ALONG WITH
MAUREEN CASEY WHO IS REPRESENTING THE COMPLAINANT TMC LONG
DISTANCE IN SAN DIEGO.

12

13

MS. WOOLF: AND NANCY WOOLF FOR PACIFIC BELL,
REPRESENTING PACIFIC BELL.

14

15

16

17

18

MS. DRISCOLL: COUNSEL, BEFORE WE START, I'D LIKE
TO CLARIFY. IT'S MY UNDERSTANDING THAT BY STIPULATION OF
COUNSEL WE HAVE AGREED TO LIMIT THE SCOPE OF THE QUESTIONS TODAY
TO ESTABLISHING THE IDENTITY OF THE WITNESS AND ASKING QUESTIONS
ABOUT EXHIBITS TO TMC'S COMPLAINT.

19

20

21

22

I ANTICIPATE THAT BASED UPON ADVICE OF COUNSEL, THE
WITNESS WILL DECLINE TO ANSWER CERTAIN QUESTIONS BASED UPON THE
PRIVILEGE OF THE FIFTH AMENDMENT TO DECLINE TO GIVE TESTIMONY
THAT MAY TEND TO INCRIMINATE THE WITNESS.

23

24

25

IS THAT ACCURATE?

MR. HELEIN: THIS IS CHUCK HELEIN. MY
UNDERSTANDING IS PARTIALLY IN ACCORD WITH WHAT YOU SAID, JAN,

1 AND THAT IS THAT THE WITNESSES WILL INVOKE THE FIFTH AMENDMENT
2 AND THAT IS PRIMARILY THE ONLY PURPOSE OF THESE DEPOSITIONS.
3 BECAUSE BASED UPON THAT UNDERSTANDING, CERTAIN QUESTIONS I
4 OTHERWISE MIGHT WISH TO HAVE PROPOUNDED EVEN AT THIS STAGE TO
5 THE WITNESSES, I HAVE NOT PREPARED TO DO.

6 MS. DRISCOLL: CORRECT. WE ARE SEEKING IMMUNITY.
7 ONCE THAT ISSUE IS RESOLVED, THE WITNESS WILL BE AVAILABLE FOR
8 EXAMINATION ON MATTERS RELEVANT TO THIS PROCEEDING AT ANOTHER
9 TIME.

10 WE'RE NOT WAIVING OUR RIGHT AT THAT TIME TO RAISE
11 ANY APPROPRIATE OBJECTIONS OR PRIVILEGES, BUT THE WITNESSES WILL
12 BE AVAILABLE FOR FULL QUESTIONING. IS THAT YOUR --

13 MR. HELEIN: WITH THAT UNDERSTANDING, FINE.

14 MS. WOOLF: THAT'S --

15 THE REPORTER: COULD YOU IDENTIFY YOURSELF, PLEASE?

16 MS. DRISCOLL: JUST TO CLARIFY FOR THE REPORTER,
17 THE ONLY FEMALE VOICE THAT WILL COME OVER THE TELEPHONE, I
18 BELIEVE, WILL BE NANCY WOOLF WHO REPRESENTS PACIFIC BELL; IS
19 THAT CORRECT?

20 MS. WOOLF: THAT'S MY UNDERSTANDING.

21 MR. HELEIN: YES.

22 MS. DRISCOLL: IN ORDER TO SAVE TIME, WILL COUNSEL
23 AGREE THAT THE WITNESS CAN RESPOND TO APPROPRIATE QUESTIONS,
24 QUOTE, "I DECLINE TO ANSWER UPON ADVICE OF COUNSEL," END QUOTE,
25 AND THAT SUCH RESPONSE IS DEEMED TO INCORPORATE THAT THE BASIS

1 IS THE PRIVILEGE UNDER THE FIFTH AMENDMENT AGAINST
2 SELF-INCRIMINATION?

3 MR. HELEIN: IF THE WITNESSES WOULD AT LEAST
4 THEMSELVES AT LEAST ONCE INDICATE THAT THEY ARE DECLINING ON
5 ADVICE OF COUNSEL AND INVOKING THEIR OWN FIFTH AMENDMENT; AND
6 THEN AFTER THAT, ALL SUBSEQUENT RESPONSES CAN BE SHORTENED AS
7 YOU'VE INDICATED.

8 MS. DRISCOLL: ALL RIGHT. THAT'S AGREEABLE TO ME.
9 IS THAT ACCEPTABLE, MISS WOOLF?

10 MS. WOOLF: THAT'S FINE WITH ME.

11 MS. DRISCOLL: THE FIRST WITNESS WILL BE CATHY
12 MILLER.

13

14 EXAMINATION

15 BY MS. WOOLF:

16 Q. GOOD MORNING CATHY. CAN YOU PLEASE STATE YOUR FULL
17 NAME AND CURRENT ADDRESS?

18 A. MY FULL NAME IS CATHY LYNN MILLER. MY CURRENT
19 ADDRESS IS 1026 HEMLOCK AVENUE, IMPERIAL BEACH, CALIFORNIA,
20 92032.

21 Q. MS. MILLER, BY WHOM ARE YOU CURRENTLY EMPLOYED?

22 A. I'M EMPLOYED BY EXPRESS TEL.

23 Q. WERE YOU EVER EMPLOYED BY TMC LONG DISTANCE?

24 A. YES, I WAS.

25 Q. DURING WHAT TIME PERIOD?

1 A. FROM APRIL OF '88 TO MARCH OF '89.

2 Q. AND CAN YOU BRIEFLY TELL ME IN WHAT CAPACITY YOU
3 WERE EMPLOYED BY THEM?

4 A. I WAS EMPLOYED BY THEM IN A POSITION CALLED
5 ADMINISTRATIVE MANAGER WHERE I WAS RESPONSIBLE FOR OFFICE
6 OPERATIONS, INCLUDING THE BILLING DEPARTMENT, CUSTOMER SERVICE
7 COLLECTIONS, AND DATA ENTRY.

8 Q. ARE YOU FAMILIAR WITH TMC'S CLAIMS AGAINST PACIFIC
9 BELL FOR ALLEGED POOR SERVICE RESULTING FROM TM -- EXCUSE ME,
10 FROM PACIFIC'S TANDEM SWITCH?

11 A. YES, I AM.

12 Q. WILL YOU PLEASE LOOK AT TMC'S COMPLAINT IN THIS
13 MATTER, WHICH I BELIEVE YOU HAVE IN FRONT OF YOU. AND I'D LIKE
14 TO ~~TURN YOUR ATTENTION TO EXHIBIT B AS IN FROM " OF THAT~~

1 MS. DRISCOLL: ALL RIGHT.
2 (COPIES OF EXHIBITS A-K TO THE COMPLAINT
3 MARKED DEFENDANT'S EXHIBITS A-K FOR IDENTIFICATION)

4 A. I'M AT EXHIBIT B.

5 BY MS. WOOLF:

6 Q. HAVE YOU SEEN THIS EXHIBIT BEFORE?

7 A. I DECLINE TO ANSWER ANY OF THOSE QUESTIONS ON
8 ADVICE OF COUNSEL.

9 MR. HELEIN: COULD YOU INDICATE WHAT ADVICE OF
10 COUNSEL THAT WAS, MS. MILLER?

11 MS. DRISCOLL: ON THE GROUNDS OF THE FIFTH
12 AMENDMENT.

13 THE WITNESS: ON THE GROUNDS OF THE FIFTH
14 AMENDMENT.

15 MR. HELEIN: ALL RIGHT. IS THAT ON THE GROUNDS OF
16 THE FIFTH AMENDMENT, I TAKE IT, THAT YOU ARE ASSERTING THAT TO
17 ANSWER WOULD SOMEHOW INCRIMINATE YOU?

18 MS. DRISCOLL: LET ME CONFER WITH MY CLIENT FOR
19 JUST A MINUTE. CAN WE DO THAT?

20 MR. HELEIN: YES.

21 (DISCUSSION OFF THE RECORD)

22 MS. DRISCOLL: COUNSEL, WOULD YOU REASK THAT
23 QUESTION?

24 MS. WOOLF: ALL RIGHT. ARE YOU TALKING TO ME, BY
25 "COUNSEL"?

1 MS. DRISCOLL: I'M SORRY. MISS WOOLF, WOULD YOU
2 PLEASE RESTATE THE QUESTION.

3 BY MS. WOOLF:

4 Q. MISS MILLER, HAVE YOU EVER SEEN EXHIBIT B BEFORE?

5 A. YES.

6 Q. DID YOU PREPARE EXHIBIT B?

7 A. I DECLINE TO ANSWER ON ADVICE OF COUNSEL.

8 MS. DRISCOLL: AND WHAT HE WOULD LIKE IS, FOR THIS
9 FIRST TIME, FOR YOU TO GO FURTHER AND GIVE THE BASIS.

10 A. AND THE BASIS IS IN REGARD TO THE FIFTH AMENDMENT.

11 MR. HELEIN: CAN YOU SAY THAT THE FIFTH AMENDMENT
12 IS THE BASIS IN THAT IT WOULD TEND TO INCRIMINATE YOU IN SOME
13 CRIMINAL ACTIVITY?

14 MS. DRISCOLL: THE BASIS IS THAT THE FIFTH
15 AMENDMENT PROTECTS HER FROM GIVING TESTIMONY THAT MIGHT TEND TO
16 INCRIMINATE HER.

17 MR. HELEIN: I'M JUST ASKING THAT SHE STATE THAT,
18 IF SHE COULD.

19 THE WITNESS: YES. I'M TAKING THE FIFTH AMENDMENT
20 ON THE BASIS THAT THE INFORMATION COULD INCRIMINATE ME.

21 MR. HELEIN: THANK YOU.

22 BY MS. WOOLF:

23 Q. MISS MILLER, ARE YOU FAMILIAR WITH THE CUSTOMER
24 SERVICE RECORDS WHICH TMC KEPT AND WHICH THEY CLAIM SUPPORT
25 EXHIBIT B TO THE COMPLAINT?

1 A. YES.

2 Q. DID YOU PARTICIPATE IN PREPARING ANY OF THE
3 CUSTOMER SERVICE RECORDS?

4 A. I DECLINE TO ANSWER ON ADVICE OF COUNSEL.

5 Q. DID ANYONE AT TMC TELL YOU TO MAKE FALSE ENTRIES ON
6 THE CUSTOMER SERVICE RECORDS?

7 A. I DECLINE TO ANSWER ON THE ADVICE OF COUNSEL.

8 Q. WOULD YOU REFUSE TO ANSWER ON THE SAME BASIS ANY
9 OTHER QUESTIONS CONCERNING THE CUSTOMER SERVICE RECORDS OF TMC?

10 A. THAT'S CORRECT.

11 Q. WOULD YOU REFUSE TO ANSWER ON THE SAME BASIS ANY
12 OTHER QUESTIONS CONCERNING EXHIBIT B TO THE COMPLAINT?

13 A. THAT'S CORRECT.

14 Q. WOULD YOU PLEASE TURN TO EXHIBIT D, AS IN "DOG."

15 A. OKAY. I'M AT EXHIBIT D.

16 Q. DID YOU PREPARE EXHIBIT D TO THE COMPLAINT?

17 A. I DECLINE TO ANSWER ON ADVICE OF COUNSEL.

18 Q. DID ANYONE AT TMC EVER TELL YOU TO MAKE FALSE
19 ENTRIES ON THIS DOCUMENT?

20 A. I DECLINE TO ANSWER ON ADVICE OF COUNSEL.

21 Q. WOULD YOU REFUSE TO ANSWER ON THE SAME BASIS ANY
22 OTHER QUESTIONS I HAVE CONCERNING EXHIBIT D?

23 A. THAT'S CORRECT.

24 Q. WOULD YOU PLEASE TURN TO EXHIBIT E OF THE
25 COMPLAINT.

1 A. OKAY. I'M AT EXHIBIT E.

2 Q. DID YOU PREPARE THIS EXHIBIT?

3 A. I DECLINE TO ANSWER ON ADVICE OF COUNSEL.

4 Q. DID ANYONE AT TMC EVER TELL YOU TO MAKE FALSE
5 ENTRIES ON THIS EXHIBIT?

6 A. I DECLINE TO ANSWER ON ADVICE OF COUNSEL.

7 Q. WOULD YOU REFUSE TO ANSWER ON THE SAME BASIS ANY
8 OTHER QUESTIONS I HAVE CONCERNING THIS DOCUMENT?

9 A. THAT'S CORRECT.

10 Q. WOULD YOU PLEASE TURN TO EXHIBIT F, AS IN "FRANK."

11 A. OKAY. I'M AT EXHIBIT F.

12 Q. DID YOU PREPARE THIS EXHIBIT?

13 A. I DECLINE TO ANSWER ON ADVICE OF COUNSEL.